

**IN THE MATTER OF GENERAL ELECTRIC COMPANY**

RCRA Appeal No. 91-7

**REMAND ORDER**

---

Decided April 13, 1993

---

**Syllabus**

The Environmental Appeals Board granted review of a petition filed by General Electric Company challenging the corrective action portion of a RCRA permit issued by EPA Region I. All of the issues in the case except one were disposed of in an earlier order. The one issue remaining for disposition relates to the Region's authority under the permit to revise reports and proposals submitted by GE in accordance with the permit. Under the permit, GE is required to determine the extent of contamination at the facility, the best methods to clean up such contamination, and the best way to carry out certain interim measures for addressing imminent threats to human health and the environment from the contamination. To accomplish these goals, the permit requires GE to submit proposals for completing a RCRA Facility Investigation (RFI), a Corrective Measures Study (CMS), and a number of interim measures to deal with imminent threats. When GE has completed the RFI, the CMS, and the interim measures, the permit also requires GE to prepare reports summarizing the work that has been done and if appropriate recommending that more work be done. The proposals and reports to be submitted by GE ("interim submissions") substantially define GE's obligations under the original permit. Such interim submissions are subject to the Region's approval, and the Region is authorized under the permit to revise them or to require GE to revise them. By revising GE's interim measures, the Region can require GE to do more work than GE thought was necessary to fulfill the requirements of the original permit. Once the Region has approved an interim submission, any work requirements contained therein become enforceable obligations under the permit.

GE argues that a revision by the Region of one of GE's interim submissions will constitute a modification of the permit and is therefore subject to the formal modification procedures at 40 CFR §270.41 and 40 CFR Part 124. GE also argues that, even if a revision of an interim submission does not constitute a permit modification for purposes of Section 270.41, such a revision does constitute a deprivation of property within the meaning of the Constitutional due process clause. GE argues, therefore, that it must be given notice and an opportunity for a hearing before the deprivation may be accomplished.

Held: A revision by the Region of an interim submission will not constitute a modification of the permit subject to the formal modification procedures at 40 CFR §270.41 and 40 CFR Part 124. However, before the Region approves the revised interim submission, it must give GE the opportunity for a hearing, and the procedures